IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
First Appeal No.2431 of 2005

Smt.Rukuminibai Pandurang Maskar. .. .. Appellant
v/s.
The Union of India .. .. .. Respondent

Mr.G.J. Mohan Rao for Appellant.

None for Respondent.

CORAM : SMT.ROSHAN DALVI, J.

DATED : 13th April, 2007

P.C. :

1. In this matter, the case involves an unfortunate accident in which the son of the Appellant (original Applicant) is stated to have fallen from a running train and expired. The Memo of the Station Master of Bandra Station where the accident took place and the inquest panchanama have shown that the deceased had not fallen from a local train but he was knocked down by a local train while he was crossing the line. In view of such documentary evidence, which excludes oral evidence, the claim of the Appellant has been dismissed by the Railway Claims Tribunal, Mumbai Bench, Mumbai.

2. The Appellant contends that the deceased attended the office at Churni Road and was to arrive at Jogeshwari where he is residing. Hence, there was no occasion to cross the railway line at Bandra Station. The Appellant further

contends that the office colleagues of the deceased were present at the time of the accident and would depose that the deceased fell down from the train between the Mahim and Bandra Stations. The Appellant, therefore, contends that the oral evidence in that regard would be required and an issue with regard to that fact is required to be framed and evidence recorded.

3. Though the reasoning of the Railway Tribunal appears to be reasoned and correct and oral evidence is not called for as ultimately the official documents prepared by the Station Master and Railway Police would exclude any oral evidence to the contrary, in view of the peculiar unfortunate accident, interest of justice would demand not only reliance upon the documents of the authorities, but also consideration of the eye witness account.

4. Hence, despite the otherwise apparent correct conclusion of the Tribunal, in order to give an opportunity to the Appellant to bring on record independent evidence regarding this case that the son fell off from a local train (which was not witnessed by him) evidence to that regard shall be recorded.

5. Consequently, the matter is remanded to the Railway Claims Tribunal, Mumbai Bench, Mumbai. The Tribunal shall frame the issue of fact relating to whether the deceased

fell down from the local train between the Mahim and Bandra Stations at 9.30 P.M. on 19.6.2001.

6. Advocate for the Appellant states that he desires only this issue of fact to be determined on evidence. The Appellant shall file an Affidavit of evidence of the witnesses he desires to examine and serve the Affidavit upon the Respondent so soon as the issue is framed by the Railway Claims Tribunal.

7. Appeal is disposed of accordingly.

(SMT. ROSHAN DALVI, J.)